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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
July 13, 1992

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

EQUITABLE CAPITAL MANAGEMENT CORPORATION
Reply Comments
In the Matter of Review of the Commission's
Regulations and Policies Affecting Investment
in the Broadcast Industry
MM Docket No. 92-51

Dear Sirs:

On behalf of Equitable Capital Management Corporation ("ECMC"), we submit for filing with the Federal Communications Commission (the "Commission") five copies (one of which is manually signed) of ECMC's reply comments relating to the above-referenced proceeding.

Please telephone Ira P. Shapiro at (202) 383-8159 or the undersigned at (202) 383-8058 if we may be of assistance in answering any questions that may arise in connection with your review of the enclosed documents.

Please acknowledge receipt of this letter and the enclosed documents by stamping the enclosed copy of this letter and returning it to the messenger, who has been instructed to wait.

Very truly yours,

Marcia L. MacHarg
Marcia L. MacHarg

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
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REVIEW OF THE COMMISSION'S)
REGULATIONS AND POLICIES)
AFFECTING INVESTMENT)
IN THE BROADCAST INDUSTRY)
_____)

MM Docket No. 92-51

REPLY COMMENTS
OF
EQUITABLE CAPITAL MANAGEMENT CORPORATION

Marcia L. MacHarg
Ira P. Shapiro

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555 13th Street, N.W.
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July 13, 1992

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SUMMARY

For the reasons stated herein, and in view of the strong public support of significant commenters, the Federal Communications Commission (the "Commission") should grant the request by Equitable Capital Management Corporation ("ECMC") that the Commission declare that the limited partners of each of four substantially identical public limited partnerships of which ECMC is the managing general partner are adequately insulated from involvement in the management or operation of their media investments so that the "multiplier" can be used in order to determine compliance with the alien ownership limitations of Section 310(b) of the Communications Act of 1934. In addition, ECMC also urges the Commission to grant the companion request by Kagan Media Partners, L.P. ("KMP") that the Commission declare KMP's limited partners are sufficiently insulated to the extent that they will not be deemed to hold an "attributable" interest in KMP's media investments for purposes of the Commission's multiple ownership rules. We believe that the public interest will be served if the Commission now considers expeditiously the matters specifically presented by the ECMC and KMP requests in a declaration ruling, and proceeds to address separately in its rulemaking proceeding other related and unrelated issues raised by the Commission's public notice of proposed rulemaking.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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IN THE BROADCAST INDUSTRY)
_____)

MM Docket No. 92-51

REPLY COMMENTS
OF
EQUITABLE CAPITAL MANAGEMENT CORPORATION

Equitable Capital Management Corporation
("ECMC"), by its attorneys, hereby submits its reply
comments pursuant to the Commission's Notice of Proposed
Rule Making and Notice of Inquiry, dated April 1, 1992
(FCC 92-96) (the "Rule Making Notice"), with respect to
the above-referenced matter. For the reasons set forth in
its Petition for Declaratory Ruling filed with the
Commission on June 1, 1990 (the "Ruling Request") and its
Reply Comment filed with the Commission on October 10,
1990 in connection with MMB File No. 900924A, and in light
of the Commission's views as expressed in the Rule Making
Notice and the strong public support of significant
commenters, the Commission should grant ECMC's Ruling
Request expeditiously without waiting to resolve all the

issues on which the Commission requested comment in the Rule Making Notice.

I. Background

In the Commission's Public Notice, dated August 17, 1990 (DA 90-1098) (the "Declaratory Ruling Notice"), the Commission sought comment on separate petitions for declaratory rulings filed by Kagan Media Partners, L.P. ("KMP") and ECMC. ECMC and KMP both seek rulings concerning the applicability of the Commission's insulation criteria to business development companies -- publicly offered, widely-held limited partnerships which, because of the requirements of federal and state securities laws, generally must provide certain voting rights to limited partners and are, therefore, unable to satisfy all the criteria used by the Commission to determine whether limited partners are sufficiently "insulated" from a partnership's media affairs.¹ Specifically, KMP seeks a ruling that its limited partners are sufficiently insulated to the extent that they will

1. See Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities, 97 F.C.C. 2d 997 (1984), on reconsideration, 58 Rad. Reg. 2d (P&F) 604 (1985), on further reconsideration, 61 Rad. Reg. 2d (P&F) 739 (1986).

not be deemed to hold any "attributable" interest in KMP's media investments for purposes of the Commission's multiple ownership rules.² ECMC seeks a ruling that the limited partners of public limited partnerships (the "Partnerships") of which it is the managing general partner are sufficiently insulated from involvement in the management of the Partnerships' media investments so that a "multiplier"³ can be used to determine each partnership's level of alien ownership for purposes of the alien ownership limitations of the Communications Act of 1934 (the "Communications Act").⁴

The Declaratory Ruling Notice invited comment from all interested parties. In response, comments were received from ML Media Partners, L.P. ("ML Media") and Sacramento RSA Limited Partnership ("Sacramento"). ML Media fully supported ECMC's Ruling Request, stating that it is appropriate to use the multiplier in situations where the limited partners of publicly offered, widely-held limited partnerships, such as those which are the

2. 47 C.F.R. § 73.3555.

3. See Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended, 58 Rad. Reg. 2d (P&F) 531, 541 n.52 (1985), on reconsideration 1 F.C.C. Rcd. 12 (1986).

4. 47 U.S.C. § 310(b). See also 47 C.F.R. § 22.4.

subject of the Ruling Request, possess certain voting rights required by federal and state securities laws but are otherwise uninvolved in the media-related activities of the limited partnership. ML Media further pointed out that the limited partners of such partnerships are the functional equivalent of minority stockholders in corporations. ML Media Comment, at 12. Sacramento also supported the Ruling Request.⁵ In response to the Declaratory Ruling Notice, no public commenters opposed the Ruling Request. Notwithstanding the favorable public comment, however, the Commission has taken no action with regard to either the declaratory ruling request filed by KMP or to ECMC's Ruling Request since public comments were received well over a year ago.

Earlier this year, in the Rule Making Notice, the Commission, on its own initiative, again raised for public comment the issues involved in the Ruling Request. The Commission noted that commenting parties had unanimously supported the relief requested by KMP and ECMC, and stated that

We believe that the strict application of our current attribution criteria to "business development companies" may impede the ability of these limited partnerships to make capital

5. In its Reply Comment, ECMC also fully endorsed the declaratory ruling request of KMP.

investments in broadcast entities and to attract a large pool of limited partners.

Rule Making Notice, ¶16. Rather than granting the relief requested by KMP and ECMC, however, the Commission requested additional comment regarding several related issues, such as whether there may be other types of limited partnerships similar to business development companies to which relief should be granted, as well as a wide variety of unrelated issues, including the controversial area of security and reversionary interests in broadcast licenses.

In response to the Rule Making Notice, the Commission received several comments responsive to the attribution issues raised in the Ruling Request. Again, public commenters unanimously supported the relief requested by KMP and ECMC. Prudential Insurance Company of America, for example, urged the Commission to allow the limited partners of any limited partnership to remove the general partner whenever "cause" has been found to exist by an independent third party. Comment of Prudential filed June 12, 1992, 13-14. Other commenters asked the Commission to provide relief to all widely-held limited partnerships or widely-held business trusts, rather than solely to business development companies that cannot comply with all of the Commission's attribution criteria

due to requirements of federal and state securities laws. Comment of ML Media filed June 12, 1992, 1-2; Comment of Jones Spacelink, filed June 12, 1992, 7-13. Thus, while commenters urged relief broader than the narrow relief regarding widely-held business development companies requested by KMP and ECMC, the commenters unanimously believed the relief sought in the Ruling Request should be granted.

II. The Commission Should Grant ECMC's Declaratory Ruling Request Without Waiting to Resolve Other Issues
Raised by the Rule Making Notice

KMP's and ECMC's requests for declaratory rulings have been pending with the Commission since 1989 and 1990, respectively. During that time period, the issues raised by the requests for declaratory ruling have been put forth for public comment by the Commission twice. Each time, public commenters unanimously supported the positions taken by KMP and ECMC. Moreover, the Commission itself, in the Rule Making Notice, has expressed agreement with the views espoused by KMP and ECMC.

Given this history of unqualified public support for its position, ECMC submits that it would be appropriate for the Commission to grant declaratory relief on the issue specifically presented by the Ruling Request (i.e. the application of the Commission's attribution

rules to the otherwise insulated limited partners of business development companies which are required by federal and state securities laws to afford limited partners certain voting rights) rather than attempt to address this narrow, non-controversial issue as part of a broader rulemaking proceeding involving a host of other issues, many of which bear no relation whatsoever to the issues raised by the Ruling Request. ECMC believes that, in the absence of such a declaratory ruling, the strict application of the Commission's current attribution criteria to business development companies will needlessly continue to impede the ability of these limited partnerships to make capital investments in broadcast entities while the Commission resolves unrelated issues raised by the Rule Making Notice.

III. Conclusion

ECMC, by its attorneys, respectfully requests that the Commission proceed to declare that the limited partners of each Partnership are adequately insulated from involvement in the management or operation of such Partnership's media investments so that the "multiplier" can be used in order to determine compliance by each Partnership with the alien ownership limitations contained in Section 310(b) of the Communications Act. ECMC also

fully supports the request for a related ruling submitted by KMP and urges the Commission to grant the relief requested. ECMC respectfully submits that, because there are presently several thousand public investors in the Partnerships and other similar public limited partnerships that wish to invest in media properties, the public interest would be served if the Commission proceeds expeditiously to grant ECMC's Ruling Request.

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